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SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1946

No. 532

MRS. ROBERT LEE TURMAN and CULLEN B. GOSNELL,

Appellants,

v.

J. LON DUCKWORTH, as Chairman of the Georgia State Democratic Executive Committee, et al.

Appellees.

Appeal from the District Court of the United States for the Northern District of Georgia

PETITION FOR REHEARING

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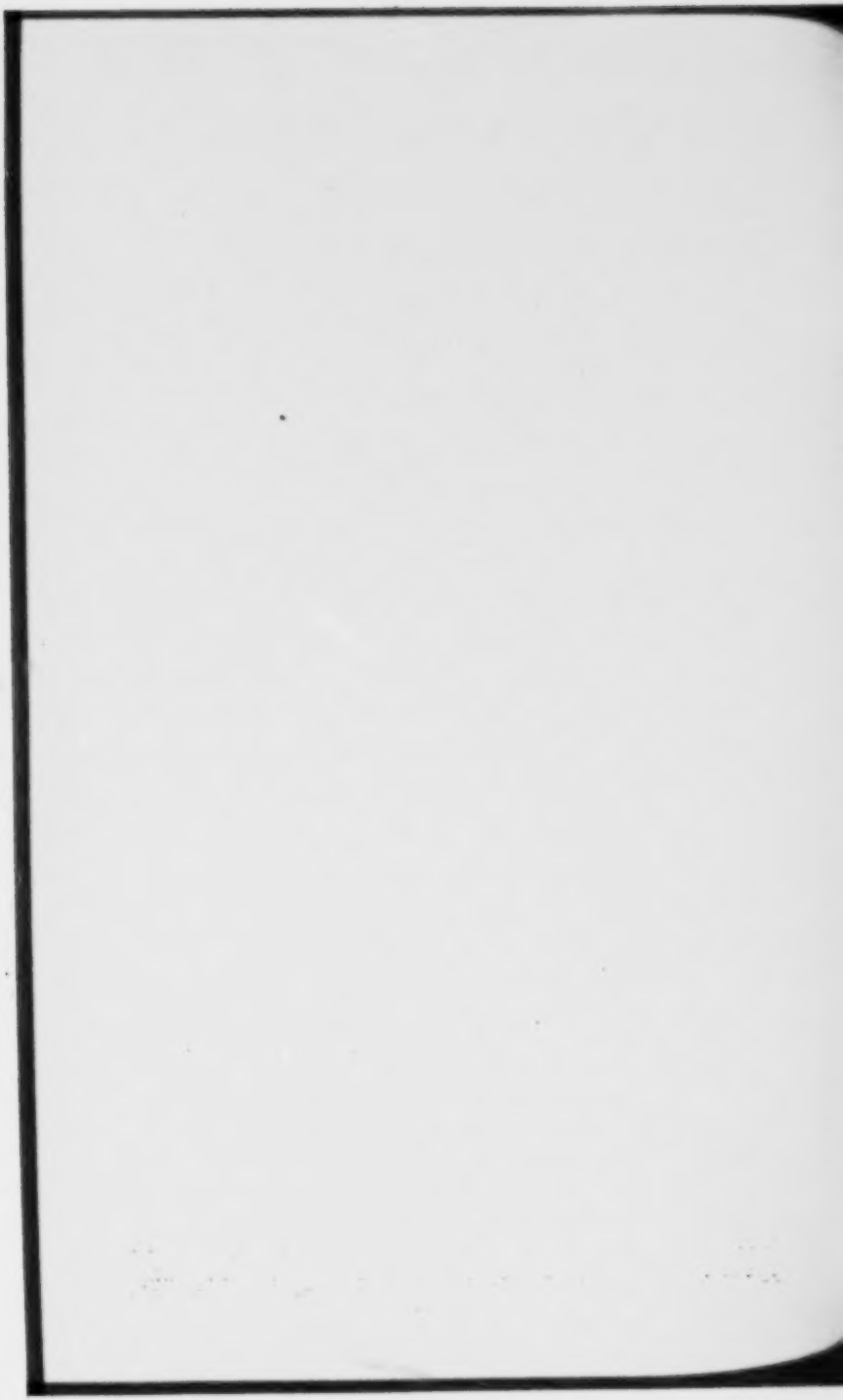

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To the Supreme Court of the United States:

Now come the Plaintiffs-Appellants in the above stated case and present this their petition for a reconsideration by the Court of its action in dismissing their appeal to this Court, and respectfully submit the following reasons:

I.

The Supreme Court in this case has rendered a most remarkable ruling PER CURIAM. It has disposed, on the merits, of one of the most important legal controversies presented to it in its history without according protesting litigants the opportunity of a hearing. It has done so in a case in which there is no question as to its technical jurisdiction. We mean by this that the case was one which was with obvious propriety and authority filed in a Federal Court asserting that a State statute violated specified provisions of the Federal Constitution and adverse judgment had been rendered against petitioners by a three-judge Court duly convened under appropriate Federal statutes. The right of an appeal to the United States Supreme Court from that judg-

ment was likewise accorded to the losing parties by Federal statute.

An adjudication had been made in the lower Court that the statute complained of did not violate the Federally protected rights of the protesting litigants and also that they were not entitled to interlocutory injunctive relief. Their prayer for declaratory judgment was also denied. In the opinion filed with the judgment it had been said by the three-Judge Court.

> " . . . in order that all questions may be ripe for consideration in the Appellate Court if necessary, we will briefly say that on the ultimate merits we do not think the State of Georgia has been shown to have deprived the plaintiffs of the equal protection of the laws."

II.

It is submitted that there is no case in the history of the United States Supreme Court which in any respect conclusively rules the questions made in the present cause. Yet this Court has by a preliminary inquiry on its own jurisdiction determined the merits of the cause now presented and which involve grave Constitutional issues without even having had the benefit of briefs in support of appellants' contentions.

III.

The case, while in no respect controlled by, was nevertheless closely related to that of *Colegrove v. Green*, 327 U. S. ....., 66 S. Ct. 1198, 90 L. Ed. 1242, in which application for rehearing and reargument was pending in the Court and in which simultaneous judgment was rendered. The *Colegrove* case had been fully argued in the Court, although in a Court reduced in number. The judgment on the main question was a three to three decision, the seventh Justice agreeing that a justiciable controversy was presented, but believing that due to practical considerations which had impact upon the State government involved, threw the weight of his judgment with the three members of the Court whose opinion he disagreed with. The Colegrove case was not, as is the present case,

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grounded on relief to individuals from private wrongs, but it did afford an occasion for a full examination of the general subject of how far courts will go in protecting political rights. The present case more than any in the history of the Court presents the question of whether equity in addition to aid by declaratory judgment will protect citizens in their right of franchise, for while *Smiley v. Holm*, 285 U. S. 355, 52 S. Ct. 397, 76 L. Ed. 795 holds favorably to appellants here, that particular question was not so fully dealt with.

IV.

It is assumed that the function of a motion such as this does not embrace repetition of factual data or the claims of appellants. It is merely mentioned that they present the most grave constitutional challenges to State legislation.

V.

It is not in any way suggested that the questions were not properly raised or presented. Nor is it questioned that solemn adjudication in the lower Federal Court was made upon each of these questions.

Two things are open for consideration: (1) Whether the results of an election held under an unconstitutional law — which results have not yet been consummated but still leave official duties to be performed by one of the respondents against whom relief is prayed — will be enjoined. (2) Whether, irrespective of the grant of injunctive relief, a declaratory judgment may be had condemning the statute in order to prevent future discrimination.

VI.

These questions have been discussed in a brief on the merits of the case, which is attached hereto and sufficient copies under the rules of the Court filed herewith, and which this Court has not yet had the opportunity of examining.

VII.

It would seem startling and shocking that in a field of the law which is so uncertain such a vital question would be con-

clusively determined without (1) full opportunity for the litigants to be heard in all of the ways prescribed by law, one of which is by oral argument in the Court, and (2) careful examination of the case on the merits.

VIII.

The foregoing is particularly true in the light of recent sharp divisions in the Court where on main questions of principle involved in this case there has been no conclusive determination. The wide and historic implications involved if the Court should adhere to its present disposition of this case might and would most likely show up in many parts of the nation in the belief, whether a mistaken one or not, that the Court had by its action placed its approval on the sort of discrimination here of record, thus giving encouragement to and promotion of the same evils in many other states of the union.

IX.

This Court in its decision, although refusing to note probable jurisdiction, actually dismissed the appeal on the merits. Whether the plaintiffs have requisite standing in the Court is a question going to the merits. In resolving the case against the plaintiffs, the Court dismissed the same on the merits and not for want of any jurisdiction. A case of such public importance should not thus be summarily disposed of.

X.

The Court by its reference to *United States v. Anchor Coal Company*, 239 U. S. 12, has apparently adjudicated that the present case is moot. Yet it is to be remembered that almost all of the issues in the present case are drawn upon whether or not effective relief can be granted, it being contended by appellants that official action yet remains to be performed, which ought to be enjoined, and by appellees that the case has become moot. All of this was true when the lower Court decided the controversy. Its decision was not upon the principle that the case was moot. Nothing has changed since that decision to render it moot. Therefore, it would seem that for this Court to so adjudicate and on the basis of its adjudication to direct dismissal in the lower Court clearly amounts

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to passing upon the very merits of the whole case — and, of course, doing so without a hearing.

WHEREFORE, IT IS RESPECTFULLLY PRAYED that this petition for rehearing and reconsideration be allowed filed, be approved, that the previous judgment of the Court dated October 28, 1946 be withdrawn, that the case be assigned on the calendar for argument, and that it be advanced for early consideration and appropriate judgment.

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W D. Thomson
W. D. Thomson

COUNSEL FOR THE TWO ABOVE-NAMED PLAINTIFFS-APPELLANTS.

We hereby certify that the foregoing Motion is presented in good faith and not for delay.

Chas. S. Reid
Charles S. Reid

November 9, 1946

W. D. Thomson
W. D. Thomson

Attorneys for the Two above named Appellants.